



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
LANSING

MICHELLE LANGE
ACTING DIRECTOR

FREEDOM OF INFORMATION ACT (FOIA) RESPONSE

January 18, 2022

Steven Schupbach
American Transparency
P.O. Box 970999
Boca Raton, FL 33497-0999

Dear Steven Schupbach:

This notice is in response to your request dated January 10, 2022 (attached), for information under the Freedom of Information Act (FOIA), MCL 15.231 et seq. Your request was received by the Department of Technology, Management and Budget, Office of Retirement Services on January 11, 2022, wherein you request information that you describe as, "first name, middle initial, last name, last employer zip code, and employee zip code of residence, last employer, and monthly annuity amount" for retired public school employees which are paid a monthly pension. Data is requested in electronic format to be broken down by employee and year.

Your request is being processed under the Freedom of Information Act (FOIA), MCL 15.231 et seq.

As explained below, your FOIA request is granted in part and denied in part:

As to the partial grant, the ORS will provide you with first name, middle initial, last name, last employer zip code, last employer, and monthly annuity amount for retired public school employees which are paid a monthly pension for calendar year 2021.

Under section 4(4) of the FOIA, MCL 15.234(4), a public body is required to provide a detailed itemization, which is attached, that clearly lists and explains the allowable charges, where applicable, for the necessary copying of a public record for inspection; actual mailing costs; actual incremental cost of duplication or publication; including labor; and the cost of search, examination, review, and deletion and separation of exempt from nonexempt information, which compose the total fee used for estimating and charging purposes.

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To begin processing this request, the DTMB requires a one-half good faith deposit of \$243.60 based on an estimated total cost of \$487.20 as permitted under section 4(8) of the FOIA, MCL 15.234(8). Failure to charge would result in an unreasonably high cost to the DTMB in this particular instance because employees must be taken away from pending work to process the request and expend additional time to complete regularly assigned departmental work.

As set forth under section 4(14) of the FOIA, MCL 15.234(14), if a fee appeal has not been filed under section 10a of the FOIA, MCL 15.240a, the DTMB must receive the required deposit within 45 days after the requester's statutorily-determined receipt of this notice, which, in this case, is March 4, 2022; otherwise, the FOIA request will be considered abandoned and the Department will not be required to fulfill the request.

Upon receipt of the deposit check, made payable to the State of Michigan and sent to the FOIA Coordinator, Department of Technology, Management and Budget, 320 S. Walnut St., P.O. Box 30026, Lansing, MI 48933, the DTMB will complete the processing of the request within an estimated 9 business days. Section 4(8) of the FOIA also provides that while the time frame estimate is nonbinding upon the public body, the public body shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on the state's public policy set forth in section 1(2) of the FOIA, MCL 15.231(2), and the nature of the request in the particular instance.

The DTMB will issue a written notice of the balance due, the statutory basis for exemptions, if any, and the statutory remedies, if applicable. After receipt of the balance due, copies of the records will be provided to you.

As to the partial denial, employee zip codes beyond the first two digits are being withheld from public disclosure under section 13(1)(a) of the FOIA, MCL 15.243(1)(a), which provides for the nondisclosure of "[i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy."

In raising the privacy exemption, the ORS relies on *Mager v Dep't of State Police*, 460 Mich 134 (1999), and *Stone Street Capital, Inc v Michigan Bureau of State Lottery*, 263 Mich App 683 (2004).

The *Mager* Court noted that disclosure under the FOIA of personal information about a private citizen contained in a governmental file would constitute a clearly unwarranted invasion of the individual's privacy when disclosure "reveals little or nothing about an agency's own conduct." The Court further observed that "the only relevant public interest in disclosure to be weighed in this balance is the extent to which disclosure would serve the core purpose of the FOIA, which is contributing significantly to public

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understanding of the operations or activities of the government.” *Mager* at 145-146 (emphasis and citations omitted).

Furthermore, the FOIA does not permit a public body to consider the requesting person’s identity and motivation or purpose for making the request or the intended use of the information. And the FOIA provides no mechanism to prevent the ongoing dissemination of the information after an initial disclosure under the act. *State Employees Ass’n v Dep’t of Mgt and Budget*, 428 Mich 104, 125-126 (1987); *Kestenbaum v Michigan State Univ*, 414 Mich 510, 528 (1982).

Thus, if the ORS were to release the personal information to the requester in this instance, it generally would have to release the information to all requesters and would have no means to ensure that the personal information is used only for benign purposes. Personal information publicly disclosed to the world at large under the FOIA, could result in the threat to or endangerment of the individuals. *Stone Street Capital, Inc* at 691. Each and every release of this information would result in “a clearly unwarranted invasion of an individual’s privacy.” MCL 15.243(1)(a).

Because this notice contains a partial denial, under section 10 of the FOIA, MCL 15.240, the ORS is obligated to inform you that you may do the following:

1. Appeal this decision in writing to the Acting Director of the Department, Michelle Lange, Elliott-Larsen Building, 320 South Walnut, P.O. Box 30026, Lansing, Michigan 48909. The writing must specifically state the word "appeal" and must identify the reasons you believe the denial should be reversed. The head of the department must respond to your appeal within 10 business days of its receipt. Under unusual circumstances, the time for response to your appeal be extended by 10 business days.
2. File an action in the Court of Claims within 180 days after the final partial denial determination. If you prevail in such an action the court is to award reasonable attorney fees, costs, disbursements, and possible damages.

ADDITIONAL COMMENTS:

The Department's written procedures and guidelines and a summary can be viewed at: www.michigan.gov/foia-dtmb.

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Sincerely,

A handwritten signature in cursive script, appearing to read "Sarah H.", written in black ink.

Sarah H.
Assistant FOIA Coordinator
Office of Retirement Services
Enclosure(s)

FREEDOM OF INFORMATION ACT RESPONSE BILLING INVOICE

Michigan Department of Technology, Management and Budget

If payment is required as indicated in the accompanying letter, requested information will not be released until the payment described below is received. Please call the above DTMB contact person or return this form if you decide you do not wish to receive this information. After 90 days it will be assumed that you no longer require the requested documents.

SECTION 1. REQUESTOR INFORMATION																															
1. Requestor's Name and Address Steven Schupbach American Transparency P.O. Box 970999 Boca Raton, FL 33497-0999																															
SECTION 2. BILL CALCULATION			AMOUNT																												
1. Labor - Searching, Examining, Review, Deletion & separating exempt from non-exempt <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black;">Title of person involved</th> <th style="text-align: center; border-bottom: 1px solid black;">Hours</th> <th style="text-align: center; border-bottom: 1px solid black;">x</th> <th style="text-align: center; border-bottom: 1px solid black;">Wage Rate (includes up to 50% fringes)</th> </tr> </thead> <tbody> <tr> <td>Data pull</td> <td style="text-align: center;">2.00</td> <td></td> <td style="text-align: center;">34.80</td> </tr> <tr> <td>Data review</td> <td style="text-align: center;">12.00</td> <td></td> <td style="text-align: center;">34.80</td> </tr> <tr> <td></td> <td style="text-align: center;">0.00</td> <td></td> <td style="text-align: center;">0.00</td> </tr> <tr> <td></td> <td style="text-align: center;">0.00</td> <td></td> <td style="text-align: center;">0.00</td> </tr> <tr> <td></td> <td style="text-align: center;">0.00</td> <td></td> <td style="text-align: center;">0.00</td> </tr> <tr> <td>Copying, Duplicating (includes scanning and/or transferring to CD, if applicable)</td> <td style="text-align: center;">0.00</td> <td></td> <td style="text-align: center;">0.00</td> </tr> </tbody> </table>			Title of person involved	Hours	x	Wage Rate (includes up to 50% fringes)	Data pull	2.00		34.80	Data review	12.00		34.80		0.00		0.00		0.00		0.00		0.00		0.00	Copying, Duplicating (includes scanning and/or transferring to CD, if applicable)	0.00		0.00	\$ 487.20
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4. Other Costs <u>Description</u> CD with Cover @ \$1.00 per unit Other: \$			\$ 0.00																												
5. Make check (business/personal) or money order payable to: Mail Checks to: <div style="display: flex; justify-content: space-between;"> <div style="width: 40%;"> State of Michigan </div> <div style="width: 50%;"> DTMB FOIA Coordinator 320 South Walnut Street 2nd Floor Directors Office Lansing, Michigan 48933 </div> </div> <p style="text-align: center;">Return a Copy of this Invoice With Your Payment</p>			TOTAL \$ 487.20																												
NOTE: IF A DEPOSIT IS REQUESTED, (TOTAL IS GREATER THAN \$50.00), THE INDICATED AMOUNT IS AN ESTIMATE OF THE COST OF COMPLYING WITH YOUR REQUEST. THE ACTUAL COST MAY VARY FROM THIS AMOUNT.			DEPOSIT (See Note) \$ 243.60																												

SECTION 3. FOR INTERNAL USE ONLY		
1. Requested Information to be: <input type="checkbox"/> Provided without charge <input type="checkbox"/> Mailed upon receipt of payment <input type="checkbox"/> Paid and picked up in person	2. Check / Money Order # From:	3. BALANCE TO BE PAID* <div style="text-align: center; font-size: 1.2em;">\$ 243.60</div>
3. Date Payment Received:	4. Date Documents Mailed:	5. Date Documents Picked Up:
6. Deposit payment in Agency Account Number	8. Cost Center	9. Object Code